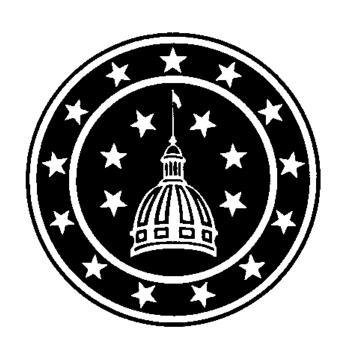
FINAL REPORT OF THE HEALTH FINANCE COMMISSION



Indiana Legislative Services Agency 200 W. Washington St., Suite 301 Indianapolis, Indiana 46204-2789

November 2005

INDIANA LEGISLATIVE COUNCIL 2005

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Health Finance Commission

Membership Roster

<u>Senators</u> <u>Representatives</u>

Patricia Miller Vaneta Becker Indianapolis Evansville

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Scott Reske Pendleton

Legislative Services Agency Staff
Kathy Norris, Fiscal Analyst
Casey Kline, Attorney

November 1, 2005

committee. This report and other documents for this Commission can be accessed from the General Assembly Homepage at $\frac{\text{http://www.in.gov/legislative/.}}{\text{http://www.in.gov/legislative/.}}$

Health Finance Commission

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted legislation establishing the Health Finance Commission to study health finance in Indiana. The Commission may study any topic: (1) directed by the chairperson of the Commission; (2) assigned by the Legislative Council; or (3) concerning issues that include the delivery, payment, and organization of health care services and rules that pertain to health care delivery, payment, and services that are under the authority of any board or agency of state government.

The Legislative Council assigned the following additional responsibilities to the Commission: (1) the cost of infertility treatment (as proposed in SR 37); (2) Certificate of Need (CON) and a moratorium on construction of nursing home beds; and (3) the problems surrounding childhood and adult obesity.

II. INTRODUCTION AND REASONS FOR STUDY

Senate Resolution 37 requested the Legislative Council to assign the Health Finance Commission the topic of procedures used in and the costs of infertility treatment. Senator Patricia Miller introduced the resolution in response to the increasing costs of infertility treatment.

The Legislative Council assigned the topic of Certificate of Need Programs and a moratorium on the construction of nursing home beds in response to the ongoing concern regarding Indiana's low nursing home bed occupancy rates, higher-than-average placements, and increasing long term care costs in the Medicaid program.

The topic of childhood and adult obesity was assigned by the Legislative Council in reflection of ongoing legislative concern about the impact of increasing numbers of overweight and obese adults and children. Overweight and obesity and numerous associated co-morbidities impact current and future quality of life, healthcare costs, and workforce productivity of Hoosiers.

III. SUMMARY OF WORK PROGRAM

The Commission met five times during the 2005 interim. All Commission meetings were held at the State House in Indianapolis.

The first meeting was held July 5, 2005. The meeting was devoted to hearing testimony intended to update and provide overviews to the Commission on several issues. The Department of Insurance presented an overview of the Indiana Residual Malpractice Insurance Authority (IRMIA) and explained why the new malpractice rates set for the system were so high. Dr. Eric Meslin and Dr. John Jarrett presented an overview of issues with regard to assistive reproductive technology. Secretary Mitch Roob addressed problems and plans for the organizational structure and function of the Family and Social Services Administration.

The second meeting was held August 8, 2005. The meeting began with an overview of the

causes, extent, and consequences of overweight and obesity for Indiana's population. Discussion then focused on the role that availability of school vending products plays in contributing to weight problems of school children. The Commission also heard testimony on the features and implementation of the Medicare Part D prescription drug coverage program.

The third meeting was held September 8, 2005. The purpose of the meeting was to hear testimony in more depth on issues presented at previous meetings. Existing regulation of infertility and surrogacy practices were discussed, and gaps in the law created by the rapid advance of medical technology were identified. The issue of assignment of insurance benefits for out-of-network providers was described and justified by the insurance industry; a provider and individual patients testified to problems that can arise when assignment is not allowed. The remainder of the meeting was devoted to hearing testimony on the impact of carbonated beverages on children's health. The American Beverage Association's new school vending policy was distributed to the Commission and discussed.

The fourth meeting was held September 29, 2005. The testimony at the meeting was focused on presentations by the Department of Education on evidence linking nutrition status with learning. The School and Community Nutrition Program and the Coordinated School Health Program were discussed to present a broad view of how schools are addressing adequate nutrition and physical activity. A vending operator presented testimony regarding problems his company encountered with efforts to identify and merchandise healthier products in their school vending machines. The Commission discussed and took testimony on three preliminary bill drafts dealing with school vending, school health measurements, and a long term care building moratorium. The Commission heard the description of a first draft of legislation addressing assistive reproductive technology and that would provide a definition of the legal parents of a child resulting from the application of this technology. The Commission took no action with regard to any draft legislation at this meeting.

The fifth meeting was held October 20, 2005. The meeting was for the purpose of considering and approving legislative recommendations and the Commission's final report. Testimony was heard on issues relating to the state's preparedness for a potential bird influenza pandemic. The Commission also heard testimony related to the validity of the body mass index (BMI) as a screening tool for overweight and obesity. The Commission also heard a presentation on the drug plans that will be available to Hoosiers under the Medicare Part D prescription drug program.

IV. SUMMARY OF TESTIMONY

This section is a general summary of testimony received by the Commission on the issues assigned by the Legislative Council. To read a more complete report of this testimony and other matters considered by the Commission, the minutes of the Commission's five meetings can be found on the homepage of the Indiana General Assembly (http://www.in.gov/legislative/) or copies may be obtained by contacting the Legislative Information Center of the Legislative Services Agency.

Insurance Issues

Malpractice Insurance Costs

In response to reports of double-digit increases in malpractice insurance, the Commission requested an update and explanation from the Department of Insurance.

Ms. Cindy Donovan, Deputy Commissioner, Financial Services Division of the Indiana Department of Insurance, testified that the Indiana Residual Malpractice Insurance Authority (IRMIA) had average overall rate increases of 35.6%. She explained the rate increases were due to changes in the corporate rating and underwriting methodology that were made in order to accurately reflect exposure and increased risk margins. Ms. Donovan also gave an overview of the Indiana Patient's Compensation Fund (PCF). She stated that the PCF is a voluntary program funded by surcharges on malpractice premiums, which were increased in 2005 as the result of actuarial recommendations. These increases were necessary to ensure that the PCF remains solvent.

Assignment of Benefits for Out-of-Network Providers

In response to a request that Indiana adopt provisions requiring that health insurance plans accept mandatory assignment of patient benefits, the Commission requested an explanation of the issue. Ms. Anne Doran representing the Indiana Association of Health Plans explained that accepting assignment of a patient's benefit allows a health care provider to directly bill the insurance carrier for services provided to the patient by the provider. Under Indiana law, insurance carriers must allow providers that are willing to accept the terms of the health plan's contract to participate in the plan's network of providers. This provision is known as any-willingprovider. Providers that do not participate in a particular health plan's network do so out of choice. Health plans may determine not to allow the assignment of the patient's benefits for providers that do not participate in their contracts. If that is the case, the patient must file the claim with the health plan and assume responsibility for paying the provider directly. Ms. Doran explained that requiring mandatory assignment of benefits would cost patients money, remove incentives for patients to seek services that are provided to the health plan for a discount, and eliminate incentives for providers to offer these discounts. She testified that mandating out-ofnetwork assignment of benefits would result in the reduction or elimination of the discounts and an increase in health insurance premiums.

Tony Wolf, D.C., testified that the health care claims process is extraordinarily complex and that the practice of not allowing assignment of benefits places an undue burden on patients who choose to receive care from an out-of-network provider.

The Commission requested the Indiana Department of Insurance to respond to comments that the Department had not resolved complaints made regarding this issue. Carol Cutter, Deputy Commissioner, Consumer Services Division of the Indiana Department of Insurance, reported that the previous Commissioner of the Department, Sally McCarty, had personally met with Dr. Wolf within the time frame specified in the Department's rules. She reported that it was determined at that meeting, that claims processing procedures in Dr. Wolf's office were responsible for the delay in his receivables that was the basis of his complaint.

Medicare Part D, Prescription Drug Coverage Implementation

Katherine Lester, Manager of Medicare Strategy, Elli Lilly & Co., gave two presentations to the Commission regarding the implementation of the Medicare Part D benefit roll-out in Indiana. Ms. Lester addressed the new Medicare benefit from the perspective of those individuals responsible for choosing a coverage plan and paying premiums. The first presentation was an overview of the program including a description of the prescription drug coverage benefit, the deadlines that people needed to be aware of, and when specific information on the coverage plans would be available. The second presentation included specific information on the coverage plans being offered in Indiana and how individuals could access information and assistance in choosing a plan. Both presentations concluded with information regarding the public education and information efforts underway to help Medicare beneficiaries enroll for the

new benefit.

Long Term Care Issues

FSSA Organizational Changes and Plans

Mitch Roob, Secretary of the Family and Social Services Administration (FSSA), presented the results of an organizational audit of FSSA that was performed by KPMG. After reviewing the identified problems facing the agency, Secretary Roob outlined the administration's plans for the future of the agency. The Secretary testified that the current Division of Disability, Aging, and Rehabilitative Services would be divided into two divisions; one division will be focused on services for the aged. The goal of this division will be to transform long-term care from a real estate-based model to a services-based model of care. Secretary Roob stated that currently 90% of seniors served by FSSA are residing in nursing facilities. FSSA would like to reduce this percentage to 50% by increasing the use of home- and community-based services. Additionally, FSSA would like to decrease the number of individuals on the waiting lists for Medicaid waiver services.

Quality Assurance Fee Implementation

Secretary Roob reported that the Quality Assurance Fee was approved by the Centers for Medicare and Medicaid Services (CMS) in April 2005, and that FSSA has been collecting the fee and making retroactive payments under the approved program.

Long-Term Care Building Moratorium

Secretary Roob testified that a brief moratorium on the building of nursing homes is considered necessary because of increases in nursing facility reimbursement. He expressed concern that the new level of reimbursement for nursing facilities made possible by the Quality Assessment Fee may be attractive enough to result in an influx of new providers to Indiana. He expressed doubts about the effectiveness of a Certificate of Need program in dealing with this issue. Mr. Roob commented that it was his hope that a moratorium would be needed for less than two years. John Okeson, Legislative Director of FSSA, stated that FSSA wishes to use the time provided by the moratorium to plan for the long-term care needs of the state.

Ms. Faith Laird representing the Indiana Health Care Association stated that the Association supported the concept of a moratorium as long as there were no exceptions allowed. She noted that facilities currently under construction should be allowed the opportunity to be licensed and certified on completion. Ms. Laird also commented on the efficacy of Certificate of Need programs. She noted that the occupancy penalty in the Medicaid reimbursement formula had more impact on reducing the number of nursing home beds than the Certificate of Need program had when it was operating in the state.

Mr. Jim Leich, representing the Indiana Association of Homes and Services for the Aging, stated that the Association would like to see an exception to the moratorium made for Continuing Care Retirement Communities (CCRC). These entities do not participate in the Quality Assessment Fee program and have defined communities for which they provide services in a continuum of care. Mr. Tim Kennedy, representing the Indiana Hospital and Health Association, testified that the hospitals support a moratorium with an exception for hospital-based beds. This exception was justified for three reasons: (1) hospital beds operated as nursing facility beds are licensed as hospital beds; (2) these units are exempt from the

Quality Assessment Fee program; and (3) state statute already limits the number of beds that may be converted and the level of care allowed for converted beds. The number of nursing facilities under construction was not known at the time the testimony was heard by the Commission.

Childhood Overweight and Obesity Issues

Extent and Consequences of the Problem

Dr William Wishner testified that overweight and obesity have become a problem as the result of a combination of factors: improved transportation and the automobile culture; increased food production capacity; improved food preservation and storage; lower food prices; the development of the fast food industry; an increase in sedentary behavior as a result of the development of electronic technologies; and the dismantling of an environment that encourages physical activity. He reported that 25% to 50% of Indiana's adults are obese; an even larger percentage are considered to be overweight.

Dr. Ravi Shankar testified that studies indicate that children are equally affected by this problem. He stated that studies indicate that obese children will be obese as adults. He added that the incidence of Type 2 diabetes, which used to rarely be seen in children, has increased as well as other conditions, such as elevated cholesterol that formerly were considered to be adult conditions. Dr. Wishner stated that the medical and economic consequences of obesity are enormous. It is estimated that the cost for treatment of obesity, its related comorbidities, and lower worker and academic productivity is now close to \$2 B annually. Dr. Wishner suggested to the Commission that efforts to change the trends for overweight and obesity be focused on children since their progress will be the measure of the future.

School Vending Issues

Representative Vaneta Becker discussed the school vending requirements that were included in SB 360-2005 that were removed before the bill was passed. The major components of the bill included: (1) 50% of choices available in vending machines located in schools would be required to meet a definition of "healthy" as defined by the USDA; (2) physical activity would be required for elementary students; (3) vending machines would be prohibited in student-accessible areas of elementary schools; and (4) a requirement that local school boards would establish coordinated school health advisory councils that were to develop local wellness policies.

Mr. Joe Lackey of the Indiana Soft Drink Association testified that the definition of the term "healthy" as it related to products sold in vending machines was the source of the Soft Drink Association's previous opposition to the bill. The final draft reviewed by the Commission revised the term "healthy" to refer to "better choice beverages" to which the Soft Drink Association had no objection. He commented that the final draft also removed isotonic drinks (sports drinks) from the "better choice beverage" classification which the Association did not agree with.

Several individuals testified in regard to the low per-student vending sales revenue, the fact that the availability of the products is, or can be limited by timers on the machines; and that individual food or drink products do not cause inappropriate weight gain in isolation.

Mr. Scott Coffel related his vending company's experience with trying to identify and place what would be considered "healthy" products in school vending machines in the South Bend

area. He testified that the schools and his vending company had little or no nutritional expertise to guide the selection of what products would meet the definition.

Mr. Steve Beebe, representing the Indiana Vending Council, suggested that the sale of candy as school fund raisers should be prohibited since it sends a conflicting message to students. He commented that the draft legislation would ban the sale of similar products in vending machines while the candy sales would encourage children to sell the same products at school to their friends.

Effects of Carbonated Drinks on Children's Health

Several physicians, dentists, and registered dieticians testified on the impact of carbonated and fruit-flavored drinks on children's health. Dr. Ravi Shankar reviewed the results of studies that correlate weight gain or obesity with the consumption of diet sodas. He concluded that the evidence indicates that families whose children consume diet sodas, make certain other food and lifestyle choices such as consumption of fried fast food that influence their children's weight.

Dr. Linda DiMeglio testified that there is an increasing prevalence of adolescent bone fractures which may be due to decreased calcium consumption and lack of exercise. She reported that large numbers of children are not meeting the minimum intake of calcium necessary for good bone health. Dr. DiMeglio stated that the problem is that diet soft drinks have replaced milk in the diets of adolescents.

Dr. Judy Chin testified that excessive soft drink or juice consumption can lead to erosion or decay of the teeth. She recommended that access to these products should be limited for children and that milk and water consumption should be encouraged.

Dr. Judith Monroe, State Health Commissioner, summarized that the greatest adverse impact of carbonated drinks on the health of children and adults is the displacement of milk in their diets.

Representatives of the Soft Drink Association stressed that: (1) consumption of carbonated and juice products from school vending machines is low on a per-student-per-week basis, (2) frequency and quantity consumed must also be considered, and (3) milk consumption is not the only source of calcium in the diet - yogurt, cheese, and other fortified products also are good calcium sources.

Department of Education Programs Addressing Nutrition and Activity

Mr. Scott Minier Legislative Liaison of the Department of Education, reviewed studies on the effects of good nutrition on the ability of students to learn. Beth Foland and Suzanne Crouch of the Department of Education provided overviews of the School and Community Nutrition Program and the Coordinated School Health Program for the Commission.

School Health Measurements

Dr William Wishner testified that most available statistics on individual's weight is self-reported - there is no good data source on obesity and overweight status of the population.

Senator Dillon referred to a presentation made to the Joint Select Commission on Medicaid Oversight on the evaluation of the Medicaid Disease Management program by Dr. Thomas Inui, who stressed the value of accurate data in determining the extent of the problem and in

measuring the progress of interventions. Senator Dillon suggested to the Commission that voluntary measurement programs could not be expected to provide good data because of self-selection. He commented that accurate data on school children's height and weight would allow for scientific evaluation and observation-based programs to address the problem of childhood obesity and overweight. Mr. Frank Bush testified that the value of the body mass index (BMI) as a measure of appropriate body size for children has been questioned since this index was developed for adults.

Dr. Gilbert Liu testified regarding the advantages and disadvantages of using the BMI as a valid screening tool for overweight and obesity. He stated that the BMI is not 100% accurate in determining obesity on an individual basis, but it is about 90% effective. BMI is also highly predictable, easy to do, and reliable for repeat observations. Other indicators for overweight or obesity are available but would be difficult to implement in a school setting. Dr. Liu addressed the issues of voluntary participation and the problem of self-selection biasing the study results. He also discussed the lack of successful intervention strategies and long-term outcomes as indicative of the need for more research in this area. Dr. Liu pointed out that had a viral outbreak caused disease on the scale demonstrated by the increases seen in overweight and obese individuals, the surge of concern would be enormous.

Infertility and Surrogacy Issues

Assistive Reproductive Technology

Dr. Eric Meslin testified to the Commission concerning the lack of regulation of infertility clinics. He stated that the lack of regulation makes it difficult to determine the extent of activity in the area of assistive reproductive technology. Dr. Meslin stated that the information that is lacking includes: the number of infertility clinics operating in the state; the types of information and consent forms being given to patients; the technology being used in the clinics; and whether each clinic defines "success" in the same manner.

Dr. Meslin mentioned that the American Society of Reproductive Medicine does have guidelines in this field.

Dr. John Jarrett disputed Dr. Meslin's statement regarding inadequate regulation in the field and cited the data collection requirements of the Centers for Disease Control and the accreditation requirements of the American Society for Reproductive Medicine. He testified on procedures and protocols used in his office and provided samples of information and documentation requirements provided to patients in his clinic.

Dr. James Donahue recommended that the Commission consider developing clear guidelines for defining the rights of the parents of any potential child and that protect the welfare of the children that may result from the use of this technology. Dr. Donahue requested that the Commission clarify the existing statute on surrogacy and include a mechanism to ensure compliance.

Mr. Steve Kirsh reviewed the current Indiana statute on surrogacy and presented draft language that was intended to extend similar legal protections of adoption law to children that result from the application of assistive reproductive technology. Mr. Kirsh reviewed sources of sample legislation that the Commission might wish to investigate; an Indiana statute could be based on legislation enacted in other states or on the Uniform Parentage Act.

After reviewing the draft, the Commission took no further action with regard to this subject.

Pandemic Influenza Preparedness

Judith Monroe, M.D., Commissioner of the State Department of Health, reported on the possibility of pandemic influenza and the state's preparations to deal with the possibility. Dr. Monroe defined the term pandemic and discussed the impact of the three influenza pandemics of the 20th century. She reviewed potential vaccine development and use and limitations of antiviral drugs. Dr. Monroe stated that the state has a statewide plan for dealing with a mass outbreak of disease, and each county is required to have a local plan as well. She emphasized that planning for such an event must be flexible and adaptable.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission made the following legislative recommendations:

The Student Nutrition and Physical Activity draft (PDOC20061189.005) would require school boards to establish a coordinated school health advisory council to develop local wellness policies in compliance with federal requirements. The draft legislation would also establish requirements for food and beverage items that are available for sale to students outside the federal meal programs with specified exceptions. The draft legislation further requires daily physical activity for elementary school students, with certain exceptions. The Commission voted 18-0 to support the Student Nutrition and Physical Activity draft.

The Student Health Data draft (PDOC 20061293.002) would require each school corporation to report certain student health data to the State Department of Health. The draft legislation would also require the Department to publish an annual report summarizing the data. The Commission voted 12-5 to support the Student Health Data draft legislation.

The Comprehensive Care Bed Moratorium (PDOC20061058.004) would impose a two-year moratorium on the construction or addition of comprehensive care beds with certain exceptions. The Commission voted 17-0 to support the Comprehensive Care Bed Moratorium draft legislation as amended to include an expiration date of June 30, 2008.

The Commission voted 17-0 to adopt the final report as amended to change the approval date of the Quality Assessment and with the addition of the October 20, 2005, meeting testimony and actions taken on the preliminary drafts.

WITNESS LIST

July 5, 2005

Zach Cattell, Indiana Academy of Family Physicians

Cindy Donovan, Deputy Commissioner, Financial Services Operations, Indiana Department of Insurance

John Jarrett, MD, Jarrett Infertility Group

Faith Laird, Indiana Health Care Association

Jim Leich, Indiana Association of Homes and Services for the Aging

Dr. Eric Meslin, Indiana University

Michelle Milliken, Legislative Director, Indiana State Department of Health

Mitch Roob, Secretary, Family and Social Services Administration

Jim Zieba, Indiana State Medical Association

August 8, 2005

Representative Vaneta Becker, Evansville

Jeanne Labrecque, Director, Office of Medicaid Policy and Planning

Joe Lackey, Executive Director, Indiana Soft Drink Association

Katherine Lester, Manager, Business to Business Division, Eli Lilly & Co.

Michelle Macedonio, RD, representing the National Automatic Merchandising Association

Judith Monroe, MD, Commissioner, Indiana State Department of Health

Julie Newland, Manager, Public Affairs, Eli Lilly & Co.

Martha Rardin, RD, CD, Indiana Dietetic Association

Patricia Richards, American Cancer Society

David Thorp, Director, State and Local Affairs, American Beverage Association

William Wishner, MD, Medical Advisor, Eli Lilly & Co.

September 8, 2005

Leslie Bonci, MPH, RD, LDN, representing the Indiana Soft Drink Association and the American Beverage Association

Jennifer Cleveland, RD, representing pediatric dieticians at Riley Hospital

Judy Chin, DDS, Pediatric Dentist

Linda DiMeglio, Pediatric Endocrinologist, Riley Hospital

James Donahue, MD, Family Beginnings, PC

Ann Doran, representing the Indiana Association of Health Plans

Kim Galeaz, RD, representing the Indiana Soft Drink Association and the American Beverage Association

John Jarrett, MD, Jarrett Fertility Group

Steve Kirsh, JD

Joe Lackey, Executive Director, Indiana Soft Drink Association

Mary Ann Maroon, representing the Indiana Health Care Association

Judith Monroe, MD, Commissioner, Indiana State Department of Health

Martha Rardin, RD, CD, Indiana Dietetic Association

Mitch Roob, Secretary, Family and Social Services Administration

Tom Roush

Ravi Shankar, MD, Pediatric Endocrinologist, Riley Hospital

Michael Walpe

Anthony Wolf, DC

Domenick Zero, DDS, Director, Oral Health Research Institute, Indiana University

September 29, 2005

Senator Vaneta Becker

Frank Bush, Indiana School Boards Association

Scott Coffel

Suzanne Crouch, Director, Coordinated School Health Program, Department of Education Carol Cutter, Deputy Commissioner, Department of Insurance

Bob Decker, Hoosier Owners and Providers for the Elderly (HOPE)

Beth Foland, RD, School and Community Nutrition Program, Department of Education Bettye Foy, Deputy Commissioner, Consumer Services Division, Department of Insurance Tim Kennedy, representing the Indiana Hospital and Health Association

Faith Laird, Indiana Health Care Association

Jim Leich, Indiana Association of Homes and Services for the Aging Scott Minier, Legislative Liaison, Department of Education

October 20, 2005

Steve Beebe, Indiana Vending Council

Frank Bush, Indiana School Boards Association

Bob Decker, Hoosier Owners and Providers for the Elderly (HOPE)

Randy Fearnow, representing American Senior Communities

Tim Kennedy, representing the Indiana Hospital and Health Association

Joe Lackey, Executive Director, Indiana Soft Drink Association

Faith Laird, Indiana Health Care Association

Jim Leich, Indiana Association of Homes and Services for the Aging

Katherine Lester, Manager, Business to Business Division, Eli Lilly & Co.

Gilbert C. Liu, M.D., M.S., Children's Health Services Research, Indiana University

Judith Monroe, M.D., Commissioner, Indiana State Department of Health

Julie Newland, Manager, Public Affairs, Eli Lilly & Co.

John Okeson, Legislative Director, Family and Social Services Administration